Supreme Court, U.S.
FILED

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No.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1995

MARSHALL A. LEVIN,

Petitioner,

v.

ATTORNEY REGISTRATION AND DISCIPLINARY COMMISSION OF THE SUPREME COURT OF ILLINOIS and MARY ROBINSON, ADMINISTRATOR OF THE ATTORNEY REGISTRATION AND DISCIPLINARY COMMISSION OF THE SUPREME COURT OF ILLINOIS,

Respondents.

Petition for Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether, an attorney, who is the subject matter of a state disciplinary proceeding, can obtain federal jurisdiction over alleged acts of federal constitutional deprivations, by having asked the state supreme court to have reviewed such allegations in its supervisory capacity, and should such federal jurisdiction include a civil action for damages, and equitable relief, for said violations perpetrated by the state's disciplinary commission and its administrator?

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Respondents.

Petition for Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

PETITION FOR WRIT OF CERTIORARI

Petitioner, Marshall A. Levin, respectfully prays that a writ of certiorari issue to review the judgment order of the United States Court of Appeals for the Seventh Circuit entered on January 17, 1996 and to review the subsequent denial of the motion for reconsideration on February 20, 1996.

OPINIONS BELOW

The United States Court of Appeals for the Seventh Circuit modified the judgment of the district court and dismissed petitioner's complaint for lack of jurisdiction. A motion to reconsider was subsequently denied. The opinion below is reported at 74 F.3d 763 (7th Cir. 1996).

JURISDICTION

The judgment of the United States Court of Appeals for the Seventh Circuit was entered on January 17, 1996, and reconsideration was denied on February 20, 1996. This Court's jurisdiction to consider this petition from the final judgment or decree by the United States Court of Appeals in which the decision could be had is invoked pursuant to 28 U.S.C. Section 1254.

FEDERAL STATUTE INVOLVED

Title 42, United States Code, Section 1983.

> Every person who, under color of any statute*, of any state subjects any citizen* to the deprivation of any rights* secured by the Constitution, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

STATE STATUTES INVOLVED

Illinois Supreme Court Rule 383(a) (1995):

> "(a) motion requesting the exercise of the Supreme Courts' supervisory authority shall be supported by explanatory suggestions and shall contain or have attached to it the lower court records or other pertinent material that will fully present the issues."

Illinois Supreme Court Rule 753,
Amended, effective August 1, 1985:

(a) Inquiry Boards* shall consist of members of the bar of Illinois.

(d) Review Board* nine member Review Board* not less than five members shall constitute a quorum, necessary to a decision.

(e) Review Procedure* the respondent may file exceptions with the court.

Illinois Supreme Court Rule 753,
Amended, effective November 1, 1990:

(a) Inquiry Boards* shall consist of members of the bar of Illinois and nonlawyer.

Illinois Supreme Court Rule 753,
Amended effective May 26, 1993:

* The Review Board shall function in panels of three, presided over by the most senior of the panel. The concurrence of two members of a panel shall be necessary to a decision. Amended eff. May 26, 1993.

Illinois Supreme Court Rule 764(b),
Amended, effective August 27, 1990:

* the disciplined attorney shall not maintain a presence or occupy an office where the practice of law is conducted.

Illinois Supreme Court Rule 773(d),
Amended, effective October 13, 1989:

* costs shall be paid by the respondent attorney.

STATEMENT OF THE CASE

A complaint was voted on by an inquiry board against an attorney. The inquiry board consisted of two lawyers and a nonlawyer. The acts complained of took place prior to 11/1/90. Before 11/1/90, the applicable rule only provided for lawyers voting on such a complaint. As a result of the inquiry board's vote; which board contained the nonlawyer; a twelve count complaint was issued to be heard by a hearing board. The hearing board, after conducting a hearing, found the lawyer guilty of the twelve

counts and recommended that the lawyer be disbarred. The lawyer filed exceptions to the report of the hearing board with a review board which concurred with the decision of the hearing board.

The review board consisted of three members. The rule in effect at the time of the alleged wrongdoing(s) provided for a review board of nine members rather than three members. Notwithstanding the prior rules, the hearing board report was confirmed by only a three man review board. The lawyer did not, up to this point, claim any constitutional deprivations.

On 9/27/94, the lawyer filed a motion for a supervisory order to the Illinois Supreme Court pursuant to Rule 383, which allowed for a request for the Court to exercise "supervisory authority". The motion pointed out to the Court many allegations of the use of unconstitutional rules and implementations by the disciplinary commission. The motion was denied on 10/28/94.

On 9/29/94, while the motion for supervisory relief was pending, the lawyer filed for leave of the state supreme court to file exceptions to the review board's report and recommendations. No allegations of unconstitutional activities were alleged.

The rule in effect at the time of the alleged wrongdoing(s) gave a lawyer the right to file exceptions with the state supreme court, to the report of a review board. The lawyer was not allowed to file his exceptions; according to a new rule which went into effect after the alleged wrongdoing(s). On 1/25/95 the state supreme court adopted the report of the review board and disbarred the lawyer. Reciprocally, the federal court also disbarred.

A Five Thousand and no/100 Dollars ($5,000.00) fine was charged against the lawyer by the disciplinary commission.

On 12/23/94 the lawyer filed a federal civil complaint alleging violations of the United States Constitution requesting relief pursuant to 42 U.S.C. Section 1983.

The federal complaint alleged that:

a. Counts I and II asserted that the disciplinary proceedings violated Levin's due process and equal protection rights by forcing him to abandon his federal bankruptcy practice.

b. Count III alleged that the Supreme Court of Illinois Rules (Numbers 753 and 764(b)) used to prosecute the lawyer were not even in existence at the time of the alleged wrongdoing(s).

c. Count IV claimed damages for the alleged unconstitutional deprivations.

d. Count V claimed that the imposition of a Five Thousand and no/100 Dollars ($5,000.00) fine against the lawyer was the imposition of a criminal fine on a person who was not given a full panoply of constitutional rights.

e. Count VI alleged that the punishment imposed on disciplined lawyers had no clear guidelines which deprived the lawyer of equal protection.

Thereafter, the disciplinary commission moved to dismiss the complaint for lack of jurisdiction and immunity. The district court dismissed for lack of jurisdiction on Counts I, II and III. Count V was dismissed on account of the matter being raised in a supervisory motion for relief. Count VI was denied for failure to raise the claim to the supreme court. Count IV was dismissed on the grounds of res judicata.

The United States Court of Appeals decided that the district court lacked jurisdiction on all six counts. The district court's judgment was modified to make the dismissal of the entire complaint based upon lack of jurisdiction.

REASONS FOR GRANTING THE WRIT

This case initially involves the words: supervisory and judicial. The petitioner, Marshall A. Levin (hereinafter referred to as "Levin") requested the Illinois Supreme Court to exercise its supervisory powers according to Rule 383 of the Illinois Supreme Court, Ill. Sup. Ct. R. 383(a) (1995). Levin claims that his federal complaint requests that federal courts grant relief due to respondents', (hereinafter known as "ARDC"),[1] unconstitutional activities.

The United States Court of Appeals for the Seventh Circuit (hereinafter known as "USCA-7") assumed at page 766 (74 F.3d 766) of its decision; that Levin was asking the federal courts "to review decisions of state courts in judicial proceedings". They assumed that Levin was asking for a review of the Illinois Supreme Court's disbar order of 1/25/95, Appendix 13.

Levin's federal civil complaint, based upon 42 U.S.C. Section 1983, was filed on 12/23/94; approximately one month before the 1/25/95 disbar order. Therefore, Levin's complaint could not have asked for review of the state court's judgment, which took place subsequently.

Levin complained, on 12/23/94, of injuries taking place "independent of any state court judgment" (page 766 of the USCA-7's decision). The injuries had to be independent of the 1/25/95 disbar order because it had not even taken place.

---

[1] Attorneys Registration and Disciplinary Commission of the Supreme Court of Illinois and Mary Robinson Administrator, of the Illinois Attorneys Registration and Disciplinary Commission of the Supreme Court of Illinois.

Since, on 12/23/94, Levin did not complain of the 1/25/95 disbar order and since the only state supreme court decision existing was the denial of the 9/29/94 supervisory order; the only state court order which Levin could have complained of, on 12/23/94,[2] was the 9/29/94 supervisory order. Said order was not a final order and therefore not appealable to the United States Supreme Court.

The order was the denial of a motion and had no language to make it a final order. The order is at page 15 of the Appendix.

Notwithstanding the dates and the clarity of Levin's progress down the "supervisory" road; the USCA-7 tries to divert Levin to the judiciary road issues by the use of self-executing diversionary dicta.

These are:

a) The relief requested would "effectively void the state court ruling" (page 766);

b) Since Levin complains of his disciplinary proceedings, and since they are judicial in nature, the said claims are "inextricably intertwined" with a state court decision;

c) That if arguments a and b, above, do not work; it is held that since the entry of the 1/25/95 disbar order; Levin's claims are moot because the rules complained of would not apply to him.

Granting relief to Levin would not "effectively void the state court ruling". Levin claims that the use of ex post facto and unconstitutional rules caused him injuries. If the federal courts did not want to upset the 1/25/95 disbar order, there is no reason why Levin could not seek dam-

[2] The date of the filing of the civil complaint.

ages or declaratory relief even though the disbar order stood. Levin, however, claims that the federal courts do have the power to declare the disbar order void. However, if an upset of the disbar order would cause the loss of federal jurisdiction, Levin would just have to be satisfied with damages or other relief.

Levin claims "injury independent of any state court judgment" (page 766 of the USCA-7 decision).

Levin has not "asked the district court to review the Illinois Supreme Court's judgment to disbar him".

Levin has asked the federal courts to review the rules and implementations; not the state court's judgment.

When Levin filed his complaint, no judgment to disbar had even been entered; so how can it be said that in his complaint, Levin asked review of the disbar order? It is obviously not true that Levin asked for review of the disbar order. Since the disbar order did not exist, there would be only certain other things that Levin could have requested.

At page 766 of the opinion being appealed, the United States Court of Appeals for the Seventh Circuit makes a distinction between:

a. "plaintiffs who claim their injuries are directly attributable to an erroneous state court decision"; and

b. "plaintiffs who claim injury independent of any state court judgment."

Did Levin appeal any erroneous state court judicial decision? No; he did not appeal the 1/25/95 state court decision to disbar. Therefore, Levin's complaint does not involve paragraph "a" above.

Did Levin claim injury(ies) independent of the state court judgment? Yes, he did.

a. Levin claims that the state court erred in performance of its supervisory duties when it denied his 9/29/94 motion to have the state supreme court exercise its supervisory powers.

The United States Court of Appeals at page 767 of its instant decision gives a "strained" admission of Levin's arguments. It is conceded, *arguendo*, that Levin's complaint posed only "general challenges to the Illinois Supreme Court Rules". However the Court of Appeals claims that the disbarment "mooted" such "general challenges". The Court of Appeals authority for mootness is the case of (at note 5) *United States Parole Comm'n v. Geraghty*, 445 U.S. 388, 396 (1980). *Geraghty* was a class action case involving whether the class representative always had standing throughout the litigation. Therefore, it is a case much different than our instant case.

At page 396 of *Geraghty* it is noted that mootness has two aspects:

a. "when the issues presented are no longer live"; or:

b. "the parties lack a cognizable interest in the outcome";

Both of these requirements concern whether:

"federal courts are presented with disputes that they are capable of resolving." (page 393)

Geraghty cites The Yale Law Journal, Vol. 82, 1363 (1973) concerning mootness. The Yale Law Journal article (Constitutional Adjudication: The Who and When): states that a review of "mootness cases serve to confirm the demise of the personal interest requirement," (Page 1485, The Yale Law Journal, Vol. 82 (1973)).

In *Geraghty* the plaintiff class representative was released from prison during the pendency of the case. Geraghty would not wish to go back to prison. Therefore Geraghty would not:

a. have anything at stake to continue the litigation;

b. carry on the litigation with vigor.

Levin, obviously, would like to go back to practicing law, and would vigorously prosecute his case; as opposed to Geraghty who wanted all litigation behind him.

According to Rule 10 of this Honorable United States Supreme Court; a writ of certiorari should be issued when a "United States Court of Appeals has decided an important question of federal law** in a way that conflicts with relevant decisions of this Court."

In his civil complaint; Levin claims the unconstitutionality of Illinois Supreme Court Rules:

753, amended 11/1/90;

764, amended 8/27/90;

773, amended 10/13/89.

Levin claimed that the rules deprived him of his law practice property without due process of law, and without equal protection. Further, that they imposed criminal punishment without a full panoply of constitutional rights. Further, Levin claimed that the activities for which he was accused allegedly took place before the complained of rules were even in existence. He claimed a clear violation of the ex post facto limitations of the constitution.

At page 487 of *D.C. Court of Appeals v. Feldman*, 460 U.S. 487 (1983), this Honorable United States Supreme Court noted that:

> "The remaining allegations in the complaints, however, involve a general attack on the constitutionality of Rule 461(b)(3)";
>
> *** "The District Court, therefore, has subject matter jurisdiction over these elements of the respondent's complaints."

Levin's entire complaint goes to general challenges of Illinois Supreme Court Rules.

In *Feldman*, at 460 U.S. 486, it was pointed out that in part of his complaint Feldman claimed that the D.C. Court was unreasonable and discriminatory. These allegations:

> "required the District Court to review a final judicial decision of the highest court of a jurisdiction in a particular case."

Levin makes no such allegations about a judicial decision of an Illinois judicial power. Levin claims no unreasonableness or discrimination.

Levin's complaint is certainly different than that of "Leaf." In *Leaf v. Supreme Court of State of Wis.*, 979 F.2d 589 (7th Cir. 1992), at page 598 it was shown that:

a. "Leaf is essentially attacking the investigative procedures"; and

b. "Leaf attacked the motive and the conduct of this disciplinary proceeding".

Levin makes no such allegations concerning any judicial proceeding.

The only thing Levin pointed out in his complaint were general challenges to state bar rules. These rules were made in non-judicial Supreme Court of Illinois rule making proceedings, not having anything to do with Levin. The unconstitutionality of the rules and their implemen-

tations were admitted for the purpose of the motion to dismiss the complaint. The federal courts should have simply looked at Levin's allegations and should have seen the obvious unconstitutionalities magnified by the *ex post facto* usage thereof.

All of the "buzz words"[3] used by the USCA-7 are not applicable to Levin's complaint because he complained of no judicial proceeding. Levin asked for a review of the state rules.

At page 767 (74 F.3d 763 (7th Cir. 1996)) of the instant decision the USCA-7 states that Levin claimed that the "disciplinary hearings proceeded on, and punished on, unconstitutional rules and usage". There is the conclusion that this amounts to the attack on the state court judgment. As previously stated, the state court judgment had never came about when the complaint was filed. Because the state court's agencies later used the unconstitutional rules and usages to punish Levin does not mean that the state could lift itself up by its unconstitutional bootstraps. and punish Levin by claiming he questioned their judicial decision(s). Only the rules were challenged in an independent proceeding.

The usage by the ARDC of unconstitutional rules in Levin's prosecution did not become cleansed by the judicial order which resulted from such usage. Such a result would all but cause 42 U.S.C. Section 1983 to become an empty statute. The State of Illinois never entered any final order disposing of the unconstitutional violations and therefore the federal court could review the rules.

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[3] Inextricably intertwine, impermissibly attack, res judicata.

If it is held that a questioned unconstitutional rule is protected from being questioned because it was subsequently used to punish in a state judicial proceeding, then violations of civil rights will have become unmanageable by the federal courts.

Possibly the most unconstitutional of all the rules complained of by Levin, is Rule 753(c)(5); which requires a petition for leave, before the Supreme Court of Illinois would allow an attorney to appear and present his case.

A similar rule of the Supreme Court of Michigan allowed a lawyer only the right to apply for leave to appeal and was analyzed in *Feiger v. Thomas*, 74 F.3d 740 (6th Cir. 1996). The U.S.C.A., 6th Cir. was:

a. "confident that the Supreme Court of Michigan takes constitutional challenges to its regulations pertaining to lawyer conduct very seriously."

b. "especially" * "where" (the lawyer) "has not even attempted to" * "assert his rights"; or

c. "invoke the Court's superintending control".

The analysis of the *Feiger* case shows the strength of Levin's complaint. A reading of the state court's order shows that the Illinois Supreme Court summarily denied Levin's motion for supervisory relief. There certainly is nothing in the denial order to indicate that the Supreme Court of Illinois takes constitutional challenges "very seriously". Levin's constitutional challenges were disposed of with the shortest of language, as follows: "motion for supervisory relief is denied.".

It cannot be said that Levin did not attempt to assert his rights or to invoke the court's "superintending control".

The weakness of the rule, which only allows for an "opportunity;" rather than the actual right to have review

is shown by the cavalier manner in which Levin's motion for supervisory relief was denied.

When the USCA-7 states that:

a. "Levin would" (after the disbar order) "no longer have a personal stake in a general declaration" concerning Illinois bar rules; and that,

b. "Levin's complaint depends entirely on the allegations that his disciplinary proceedings injured him;" (763 F.3d at 767)

these are statements that talk of prospective relief. The "reversal of an unconstitutional action, which has already injured the plaintiff constitutes prospective relief under Section 1983", *Sexton v. Ark. Supreme Court Com. on Pro Conduct*, 725 F.Supp. 1051 (1989).

If a plaintiff complained of Section 1983 violations concerning the right to vote; would the passing of the election, moot the claim to vote? No. The Plaintiff would still want to vote and vigorously pursue the case. So long as the aggrieved party continues the loss caused by the unconstitutional act, the court's should do as much as possible to put the person back where he was before the unconstitutional rules caused their harm.

Would a case involving abortion become moot by the baby's demise?

Levin's request for relief is clearly within the purview of 42 U.S.C. § 1983. If there was a "deprivation of any rights" by those acting "under color of" an unconstitutional rule, Levin would be entitled to "an action at law" or "suit in equity".

Levin's "action at law" requests damages. This relief has nothing to do with an overturn of the Illinois 1/25/95 disbar order. In December, 1994, Levin told the district

court that the ARDC was "under color of law" using unlawful rules to cause him damages. This request for damages was pure and simple. It was not intertwined with any judicial decision because no final judicial decision had even been made.

Levin's complaint is also a "suit in equity". Besides damages, there are prayers for equitable relief that the state proceedings be declared void. What state proceedings had occurred in 1994, when the complaint was filed? The only decision that the Supreme Court of Illinois had made, was the denial of the motion for supervisory relief. There was a denial of a request for supervisory rather than judicial relief. The federal courts can definitely say to the state courts that their supervision of obvious constitutional deprivations was wrong. This power includes an award for damages and the power of equitable relief.

The instant decision to be reviewed cites *Landers Seed Co. v. Champaign National Bank*, 15 F.3d 729, 732 (7th Cir. 1994), for the proposition that if the requested relief "would effectively void the state court ruling"; federal relief should be denied. However, at page 732 of *Landers* it was held that:

> "a district court may preside over constitutional challenges to state court rules if such review does not require review of a final state court judgment in a particular case".

The federal court would not have to look at one page or word of state judicial proceedings to grant Levin's requested relief(s). Levin only asked the federal courts to look at the rules and their obvious unconstitutionalities. There would not have to be any review of any state judicial decision. There would have to be a review of the states refusal to supervise the obvious unconstitutional acts.

CONCLUSION

Petitioner, Levin, was the victim of unconstitutional state rules and other violations of the United States Constitution. Levin presented these complaints in only a supervisory venue.

If the federal court found such constitutional violations to exist, they could have granted the petitioner damages, at law, and relief, in equity. Since the petitioner only asked the federal courts to review the states supervisory deficiencies, there would be no review of a state judicial decision.

For the aforesaid, and all other reasons stated, Petitioner, Marshall A. Levin, prays that this Honorable Supreme Court of the United States of America grant a Writ of Certiorari to review the decision of the United States Court of Appeals for the Seventh Circuit.

Respectfully submitted,

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IN THE
UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

No. 95-1951

MARSHALL LEVIN,

Plaintiff-Appellant,

v.

ATTORNEY REGISTRATION AND DISCIPLINARY COMMISSION OF THE SUPREME COURT OF ILLINOIS and MARY ROBINSON, Administrator of the Attorney Registration and Disciplinary Commission of the Supreme Court of Illinois,

Defendants-Appellees.

Appeal from the United States District Court
for the Northern District of Illinois, Eastern Division.
No. 94 C 7667—**Suzanne B. Conlon**, *Judge.*

ARGUED SEPTEMBER 29, 1995—DECIDED JANUARY 17, 1996

Before CUMMINGS, FLAUM, and MANION, *Circuit Judges.*

FLAUM, *Circuit Judge.* The plaintiff, Marshall A. Levin, claims that the Attorney Registration and Disciplinary Commission of Illinois ("the ARDC") and Mary Robinson, the ARDC administrator, instituted unconstitutional proceedings to revoke his license to practice law. The plaintiff filed a § 1983 suit in federal court, alleging that the ARDC utilized various Illinois Supreme Court Rules in violation of the United States Constitution, and requesting

declaratory, injunctive, and monetary relief. The district court dismissed all six counts of the plaintiff's complaint under Fed. R. Civ. P. 12(b), and the plaintiff appealed. Finding that the district court lacked subject-matter jurisdiction to entertain any of the plaintiff's claims, we affirm the district court's decision to dismiss the suit.

I.

The pertinent facts in this appeal are not disputed. On March 26, 1993, Robinson filed a twelve count complaint before the Hearing Board of the ARDC, alleging that Levin violated the Illinois Supreme Court Rules and the Illinois Code of Professional Responsibility through various instances of fraudulent and unprofessional conduct. After holding a two-day trial the three-member panel of the Hearing Board recorded its report and recommendation on September 7, 1993. This report found that Robinson had proven all twelve counts of the complaint by clear and convincing evidence and recommended that Levin be disbarred.[1]

On November 1, 1993, Levin filed exceptions to the report and recommendation of the Hearing Board with the Review Board. He did not allege the unconstitutionality

[1] Illinois Supreme Court Rule 753 delineates the procedures that the Illinois Supreme Court follows for attorney disciplinary proceedings. The proceedings begin with an investigation by an Inquiry Board, which then may vote that a complaint be filed against the attorney with the Hearing Board. Once a complaint is filed with the Hearing Board, it conducts an evidentiary hearing, makes findings of fact and conclusions of fact and law, and proposes a recommendation regarding discipline. The attorney or the administrator may file exceptions to the report and recommendation of the Hearing Board with a Review Board, which approves or rejects the Hearing Board's report and recommendation. Either party may then petition the Supreme Court for leave to file exceptions to the report and recommendation of the Review Board. After the Illinois Supreme Court considers and rules on the petition, it enters a final order of discipline, unless it accepts the case for further consideration.

of any Supreme Court Rules before the Review Board. After briefing and oral argument, the Review Board filed its report and recommendation on August 25, 1994, which concurred with the Hearing Board that Levin should be disbarred.

On September 27, 1994, Levin filed a *pro se* motion for a supervisory order in the Illinois Supreme Court, pursuant to Illinois Supreme Court Rule 383.[2] In his motion, Levin alleged that Rule 764(b), which prohibits a disciplined attorney from occupying an office where the practice of law is conducted, violated the due process clauses of the United States and Illinois Constitutions. He also claimed that the ARDC's use in his disciplinary proceedings of the procedures embodied in the current Rule 753, which was adopted after the date of his alleged misconduct, violated his constitutional rights. Levin requested that the Illinois Supreme Court order the ARDC to conduct his disciplinary proceedings constitutionally. After reviewing Levin's motion and the ARDC's objections, the Illinois Supreme Court denied the motion for a supervisory order on October 28, 1994.

On September 29, 1994, while his motion for a supervisory order was pending, Levin petitioned the Illinois Supreme Court for leave to file exceptions to the Review Board's report and recommendation. However, Levin did not raise any constitutional arguments in his petition. On January 25, 1995, the Illinois Supreme Court denied the plaintiff's petition for leave to file exceptions, adopted the report and recommendation of the Review Board, and entered a final order disbarring Levin. Imposing reciprocal discipline, the United States District Court for the Northern District of Illinois has disbarred Levin retroactive to January 25, 1995.

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[2] Rule 383 provides that "[a] motion requesting the exercise of the Supreme Court's supervisory authority shall be supported by explanatory suggestions and shall contain or have attached to it the lower court records or other pertinent material that will fully present the issues . . . ." Il. Sup. Ct. R. 383(a) (1995).

All six counts of Levin's federal complaint allege that the disciplinary proceedings that were used to revoke his law license violated the United States Constitution. Seeking declaratory and injunctive relief, Counts I and II assert that the disciplinary proceedings violated Levin's due process and equal protection rights by forcing him to abandon his federal bankruptcy practice. Count III alleges that the application of Illinois Supreme Court Rules 753 and 764(b) to Levin's disciplinary proceedings violated the due process and *ex post facto* clauses of the Constitution. Count IV requests five million dollars in damages for the defendants' prosecution of Levin in the allegedly unconstitutional disciplinary proceedings. Count V contends that, given the unconstitutional disciplinary proceedings against Levin, the defendants' imposition of costs upon Levin for those proceedings is unconstitutional. Finally, Count VI asserts that the application of Illinois Supreme Court Rule 771 to Levin's disciplinary proceedings deprived Levin of equal protection by failing to provide clear guidelines on appropriate sanctions.

After Levin's disciplinary proceedings had been terminated, the defendants moved the district court to dismiss the complaint, arguing that the district court lacked subject-matter jurisdiction, *res judicata* barred Levin's claims, and the defendants were entitled to absolute immunity from the claim for damages. The district court ruled that, under the *Rooker-Feldman* doctrine, it lacked subject-matter jurisdiction over Counts I, II, III, and V because similar claims were raised before the Illinois Supreme Court in Levin's Rule 383 motion. However, the district court took jurisdiction over Count VI on the ground that Levin did not raise this claim before the Illinois Supreme Court. The court also addressed the merits of Count IV without referencing *Rooker-Feldman*, apparently as a result of the ARDC's decision not to argue that the district court lacked jurisdiction over this count. After reaching the merits, the district court dismissed Count IV on absolute immunity grounds and held that Count VI was barred by *res judicata*.

II.

We must first examine whether the district court had subject-matter jurisdiction to decide this case. Subject-matter jurisdiction cannot be waived and may be contested by a party or raised *sua sponte* at any point in the proceedings. *Hawxhurst v. Pettibone Corp.*, 40 F.3d 175, 179 (7th Cir. 1994). The *Rooker-Feldman* doctrine dictates that federal district courts lack jurisdiction to review decisions of state courts. *See District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462, 476 (1983); *Rooker v. Fidelity Trust Co.*, 263 U.S. 413, 415 (1923). This limitation on federal court jurisdiction stems from 28 U.S.C. § 1257, which provides "[f]inal judgments . . . rendered by the highest court of a state . . . may be reviewed by the Supreme Court . . . ." *Feldman* construed this statute as preventing any federal court except the Supreme Court from reviewing final judgments of state courts. 460 U.S. at 476. A litigant cannot obtain collateral review of a state court judgment in federal district court absent specific congressional authorization. *See, e.g.*, 28 U.S.C. § 2241 (habeas corpus).

The Supreme Court in *Feldman* clarified what constitutes impermissible appellate review by distinguishing between general challenges to state bar rules and challenges to specific decisions of state courts:

> United States district courts . . . have subject-matter jurisdiction over general challenges to state bar rules, promulgated by state courts in nonjudicial proceedings, which do not require review of a final state-court judgment in a particular case. They do not have jurisdiction, however, over challenges to state-court decisions in particular cases arising out of judicial proceedings even if those challenges allege that the state court's action was unconstitutional.

460 U.S. at 486. The claims raised in district court need not have been argued in the state judicial proceeding for them to be barred by the *Rooker-Feldman* doctrine. *Feldman*, 460 U.S. at 483-84 n. 16; *Wright v. Tackett*, 39 F.3d

155, 157 (7th Cir. 1994), *cert. denied*, 115 S. Ct. 1100 (1995); *Ritter v. Ross*, 992 F.2d 750, 753 (7th Cir. 1993), *cert. denied*, 114 S. Ct. 694 (1994). A district court engages in impermissible appellate review when it hears claims that are "inextricably intertwined" with the state court decision. *Feldman*, 460 U.S. at 483-84 n. 16; *Wright*, 39 F.3d at 157. Along those lines, we have distinguished between plaintiffs who claim their injuries are directly attributable to an erroneous state court decision and plaintiffs who claim injury independent of any state court judgment. *See Nesses v. Shepard*, 68 F.3d 1003, 1005 (7th Cir. 1995); *Homola v. McNamara*, 59 F.3d 647, 650 (7th Cir. 1995); *GASH Associates v. Village of Rosemont*, 995 F.2d 726, 728 (7th Cir. 1993). We have also held that claims for relief are barred by *Rooker-Feldman* if upholding the claims and granting relief would effectively void the state court ruling. *Landers Seed Co. v. Champaign Nat'l Bank*, 15 F.3d 729, 732 (7th Cir. 1994), *cert. denied*, 115 S. Ct. 62 (1994). However the question is framed, the underlying inquiry remains whether "the district court is in essence being called upon to review the state-court decision." *Feldman*, 460 U.S. at 483-84 n. 16.

We have previously held that Illinois attorney disciplinary proceedings are judicial in nature. *Greening v. Moran*, 953 F.2d 301, 304 (7th Cir. 1992), *cert. denied*, 113 S. Ct. 77 (1992); *Grossgold v. Supreme Court of Illinois*, 557 F.2d 122, 125 (7th Cir. 1977). Indeed, Levin concedes that his disbarment involved judicial proceedings. Levin argues, however, that his federal claims are not "inextricably intertwined" with his disciplinary proceedings because he only raised his constitutional claims before the Illinois Supreme Court in his motion for a supervisory order, which he contends was not a judicial proceeding. Although we question the validity of Levin's contention that the Illinois Supreme Court's supervisory authority is not a judicial power, the procedural devices employed by Levin need not concern us. The fact that Levin raised his constitutional claims in a Rule 383 motion rather than through Rule 753's disciplinary procedures cannot be dis-

positive, given that claims brought in federal court may be "inextricably intertwined" with a state court decision despite never having been raised in state court. *See Feldman*, 460 U.S. at 483-84 n. 16; *Wright*, 39 F.3d at 157; *Ritter*, 992 F.2d at 753. We must examine whether Levin has effectively asked the district court to review the Illinois Supreme Court's judgment to disbar him.

We read all six counts of Levin's complaint as requesting the district court to review the Illinois Supreme Court's decision to disbar Levin. The gravamen of Levin's entire complaint is that his disciplinary proceedings were unconstitutional. All of Levin's claimed injuries stem from the application of allegedly unconstitutional Illinois Supreme Court Rules to his disciplinary proceedings, and he seeks relief to redress these particular injuries. Indeed, in his reply brief, Levin admits that his complaint is founded upon the fact that "the [disciplinary] hearings proceeded on, and punished on, unconstitutional rules and usage."[3] Levin fails to allege any injury independent of the Illinois Supreme Court's disciplinary hearings and its final decision to disbar him. Levin has thereby impermissibly attacked the Illinois Supreme Court's judgment itself in federal district court.[4] *See GASH Associates*, 995 F.2d at 728. Indeed, we have previously held

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[3] Revealingly, Levin's federal complaint contains similar claims to those found in his Rule 383 motion, which clearly requested that the Illinois Supreme Court review Levin's disciplinary proceedings.

[4] Although Count IV of Levin's complaint seeks damages for the ARDC's allegedly unlawful prosecution of him, this claim is merely another way to contest his disciplinary proceedings and the Illinois Supreme Court's decision to disbar him. As such, this claim is barred by *Rooker-Feldman*. *See Homola*, 59 F.3d at 651 (holding district court lacked jurisdiction over claim seeking damages for execution of inspection order); *Landers Seed Co.*, 15 F.3d at 732 (holding district court lacked jurisdiction over claim seeking damages for property federal plaintiff had surrendered because of state court judgment).

that claims very similar to Levin's were blocked from consideration by the *Rooker-Feldman* doctrine. *Leaf v. Supreme Court of Wisconsin*, 979 F.2d 589, 598-600 (7th Cir. 1992) (holding district court lacked jurisdiction over claims that disciplinary proceeding applied unconstitutional state bar rules and disciplinary board improperly investigated and prosecuted plaintiff), *cert. denied*, 113 S. Ct. 2417 (1993). Because Levin does not present general challenges to the Illinois Supreme Court Rules, but rather contests his disciplinary proceedings, his claims are "inextricably intertwined" with the Illinois Supreme Court's decision to disbar him. *See Feldman*, 460 U.S. at 486-87. The district court therefore lacked subject-matter jurisdiction over the complaint.

Even if we strained to read the complaint as posing only general challenges to the Illinois Supreme Court Rules, such general challenges would have been mooted by Levin's disbarment. If his disbarment stands, Levin would no longer have a personal stake in a general declaration that the Illinois bar rules, which only apply to lawyers, are unconstitutional.[5] Because Levin could not establish more than a hypothetical possibility that the Illinois bar rules would be applied to him in the future, any general challenges that he presented would not be justiciable under Article III of the Constitution. *See City of Los Angeles v. Lyons*, 461 U.S. 95, 105 (1983); *Geraghty*, 445 U.S. at 396; *Harris v. Board of Governors of Fed. Reserve Sys.*, 938 F.2d 720, 721 (7th Cir. 1991). Levin can only demonstrate a personal stake in the constitutionality of the bar rules by attacking his disbarment. Thus, the justiciability

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[5] We may conceptualize the mootness doctrine as " 'the doctrine of standing set in a time frame: The requisite personal interest that must exist at the commencement of the litigation (standing) must continue throughout its existence (mootness).' " *United States Parole Comm'n v. Geraghty*, 445 U.S. 388, 396 (1980) (quoting Monaghan, *Constitutional Adjudication: The Who and When*, 82 Yale L.J. 1363, 1384 (1973)).

of Levin's complaint depends entirely on the allegations that his disciplinary proceedings injured him. This reinforces our conclusion that Levin's claims are "inextricably intertwined" with the Illinois Supreme Court's decision. *Landers*, 15 F.3d at 732; *GASH Associates*, 995 F.2d at 728; *Facio v. Jones*, 929 F.2d 541, 543 (10th Cir. 1991).

III.

The district court dismissed four counts of the complaint on jurisdictional grounds, but reached the merits of the remaining two counts. As stated in the preceding analysis, the district court lacked jurisdiction over all six counts of the plaintiff's complaint. The district court's judgment is therefore modified to make the dismissal of the complaint solely jurisdictional, and as so modified is AFFIRMED.

A true Copy:

Teste:

Clerk of the United States Court of Appeals for the Seventh Circuit

UNITED STATES COURT OF APPEALS
For the Seventh Circuit
Chicago, Illinois 60604

February 20, 1996

HON. WALTER J. CUMMINGS, Circuit Judge
HON. JOEL M. FLAUM, Circuit Judge
HON. DANIEL A. MANION, Circuit Judge

MARSHALL A. LEVIN,

Plaintiff-Appellant,

No. 95-1951 v.

ATTORNEY REGISTRATION AND DISCIPLINARY COMMISSION, of the Supreme Court of Illinois and MARY ROBINSON, Administrator of the Attorney Registration and Disciplinary Commission of the Supreme Court of Illinois,

Defendants-Appellees.

Appeal from the United States District Court
for the Northern District of Illinois, Eastern Division.
No. 94 C 7667—Suzanne Conlon, Judge.

ORDER

On consideration of the petition for rehearing and suggestion for rehearing *in banc* filed in the above-entitled cause on January 31, 1996, by plaintiff-appellant, no judge in active service has requested a vote thereon, and all of the judges on the original panel have voted to deny a rehearing. Accordingly,

IT IS ORDERED that the aforesaid petition for rehearing and suggestion for rehearing *in banc* be, and the same is hereby DENIED.

UNITED STATES DISTRICT COURT,
NORTHERN DISTRICT OF ILLINOIS

Judge: SUZANNE B. CONLON
Case Number: 94 C 7667 Date: January 19, 1995
Case Title: Marshall A. Levin v.
Attorney Registration and Disciplinary
Commission of The Supreme Court

* * * * *

(10) ☒ [Other docket entry]
Plaintiff Marshall A. Levin's petition for preliminary injunction [2-1] is denied. (See reverse for details.)

/s/ Suzanne B. Conlon

(11) ☒ [For further detail see ☒ order on the reverse of ☐ order attached to the original minute order form.]

* * * * *

ORDER

Marshall A. Levin sues the Attorney Registration and Disciplinary Commission of the Supreme Court of Illinois ("the ARDC") and ARDC administrator Mary Robinson under 42 U.S.C. § 1983, alleging that ARDC proceedings to revoke his law license violate his right to due process of law and equal protection of the laws. Levin moves for a preliminary injunction barring defendants from submitting a disciplinary review board report to the Illinois Supreme Court and preventing defendants from taking any action against Levin or his license to practice law.

The party seeking a preliminary injunction must initially demonstrate (1) a likelihood of success on the merits, and (2) that no adequate remedy at law exists and that the

movant will suffer "irreparable harm" if preliminary relief is denied. Once this initial showing is made, the court must (3) balance the irreparable harm suffered by the moving party if relief is denied against the harm suffered by the non-moving party if relief is granted, and (4) consider the impact on the public interest. *Zorzi v. County of Putnam*, 30 F.3d 885, 895 (7th Cir. 1994); *Abbott Laboratories v. Mead Johnson & Co.*, 971 F.2d 6, 11-12 (7th Cir. 1992).

It appears unlikely that this court will be able to address the merits of Levin's claims. Levin seeks to enjoin ongoing state bar disciplinary proceedings before the Illinois Supreme Court has had an opportunity to review the case. In *Younger v. Harris*, 401 U.S. 37 (1971), the United States Supreme Court ruled that principles of comity and federalism should lead a federal court to abstain from interfering with state proceedings in which the state has a compelling interest. The Supreme Court subsequently recognized that a state's interest in bar disciplinary proceedings is sufficiently compelling to warrant *Younger* abstention. *Middlesex County Ethics Committee v. Garden State Bar Assn.*, 457 U.S. 423, 435 (1982).

Levin's petition does not suggest any reason why *Younger* would not prevent this court from reaching the merits of his claims.[1] It therefore appears unlikely that Levin's suit will succeed on the merits. Accordingly, Levin's petition for preliminary injunction must be denied.

/s/ Suzanne B. Conlon

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[1] *Younger* abstention will not apply if the plaintiff has no opportunity to raise constitutional arguments in the state proceedings. *Middlesex County Ethics Commission*, 457 U.S. at 435. However, Levin provides no reason to conclude that he will be unable to present his constitutional claims to the Illinois Supreme Court, which has yet to rule on the ARDC's recommendations.

[Filed January 30, 1995]

At a Term of the Supreme Court, begun and held in Springfield, on Monday, the ninth day of January, 1995.

Present: Michael A. Bilandic, Chief Justice
Justice Benjamin K. Miller
Justice Charles E. Freeman
Justice Mary Ann G. McMorrow
Justice James D. Heiple
Justice Moses W. Harrison II
Justice John L. Nickels

On the 25th day of January, 1995, the Supreme Court entered the following judgment:

In re:	)	
	)	
M.R. 10551	)	Atty. Reg. &
	)	Disc. Comm.
Marshall Aaron Levin	)	91 CH 597
4647 Davis St.	)	
Skokie, IL 60076-1579	)	

IT IS ORDERED that the petition by respondent Marshall Aaron Levin for leave to file exceptions to the report and recommendation of the Review Board is denied. The report and recommendation of the Review Board is approved and confirmed. Respondent is disbarred.

As the Clerk of the Supreme Court of the State of Illinois and keeper of the records, files and Seal thereof, I certify that the foregoing is a true copy of the final order entered in this case.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the Seal of said Court this 25th day of January, 1995.

/s/ Juleann Hornyak, Clerk,
Supreme Court of the
State of Illinois

[Filed October 28, 1994]

No. 77877

IN THE
SUPREME COURT OF ILLINOIS

MARSHALL A. LEVIN, Movant, vs. ATTORNEY REGISTRATION and DISCIPLINARY COMMISSION, Respondent.	)	Motion for Supervisory Order

ORDER

This cause coming to be heard on the motion of the movant, objections having been filed by the respondent, and the court being fully advised in the premises;

IT IS ORDERED that the motion for supervisory order is *denied.*

[Dated March 20, 1995]

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

MARSHALL A. LEVIN,

Plaintiff,

v.

ATTORNEY REGISTRATION AND DISCIPLINARY COMMISSION OF THE SUPREME COURT OF ILLINOIS and MARY ROBINSON, Administrator of The Attorney Registration and Disciplinary Commission of The Supreme Court of Illinois,

Defendants.

No. 94 C 7667—Suzanne B. Conlon, Judge.

MEMORANDUM OPINION AND ORDER

Marshall A. Levin sues the Attorney Registration and Disciplinary Commission of the Supreme Court of Illinois ("the ARDC") and ARDC administrator Mary Robinson under 42 U.S.C. § 1983 ("section 1983"). Levin alleges that ARDC proceedings to revoke his law license violated the United States Constitution. The complaint contains six counts. Defendants move to dismiss Counts I, II, III, V, and VI of the complaint for lack of subject-matter jurisdiction under Fed. R. Civ. P. 12(b)(1) and on *res judicata* grounds. Defendants move to dismiss Count IV for failure to state a claim upon which relief can be granted under Fed. R. Civ. P. 12(b)(6).

BACKGROUND

I. *The Complaint*

For purposes of a motion to dismiss, the court accepts all well-pleaded allegations in the complaint as true. *See, e.g., Dawson v. General Motors Corp.*, 977 F.2d 369, 372 (7th Cir. 1992). Levin is presently an attorney practicing in Cook County, Illinois. Complaint ¶ 1. For the most part, Levin practices before the United States Bankruptcy Court for the Northern District of Illinois, Eastern Division. *Id.* ¶ 2.

Levin is the subject of disciplinary proceedings initiated by the Illinois ARDC. Complaint ¶ 3. The ARDC complaint filed against Levin alleges ethics violations in 1988 and 1989. *Id.* The ARDC's complaint was considered by an Inquiry Board, a Hearing Board, and a Review Board as required by Ill. Sup. Ct. Rule 753 (collectively "the disciplinary proceedings"). *Id.* Each Board issued a recommendation that Levin's law license be revoked. *Id.* Defendants supervised or participated in all aspects of the disciplinary proceedings. *Id.*

The complaint's seven counts challenge the disciplinary proceedings on various constitutional grounds. Count I seeks declaratory relief, asserting that the disciplinary proceedings threaten to deprive Levin of his property without due process or equal protection of the law insofar as they might require him to abandon his law offices and his bankruptcy practice in the federal courts. Count II asserts the same claim contained in Count I, requesting injunctive relief. Count III contends that Levin's disciplinary proceedings violated the due process and *ex post facto* clauses of the United States Constitution. Count III asserts that Levin's rights under Ill. Sup. Ct. Rule 753 ("Rule 753") were altered between the time of his alleged

ethical violations and the time of the disciplinary proceedings noting that:

> (1) Rule 753 formerly provided for an Inquiry Board composed of lawyers alone while it now permits one non-lawyer to serve for every two lawyers;
>
> (2) Rule 753 formerly provided a Review Board of nine members, five of whom constituted a quorum but now provides for a three-person Review Board, two of whom constitute a quorum; and
>
> (3) Rule 753 formerly provided an unqualified right to file exceptions to a Review Board order with the Illinois Supreme Court but now provides only that an attorney may petition for leave to file exceptions.

Count V asserts that the *ex post facto* application of amended Rule 753 renders any imposition of costs upon Levin under Ill. Sup. Ct. Rule 773 unconstitutional. Count VI contends that Ill. Sup. Ct. Rule 771 is unconstitutional because it fails to provide clear guidelines governing the imposition of disciplinary sanctions. Finally, Count IV asserts that defendants took actions "knowingly and intentionally . . . to prosecute the plaintiff for alleged ethical violations in total disregard of plaintiff's constitutional rights"; Count IV seeks damages of $5,000,000.

II. *Defendants' submissions*

Defendants submit nine exhibits in support of their motion to dismiss. The exhibits are certified copies of pleadings and orders entered in the disciplinary proceedings. The materials are directly relevant both to defendants' claim that this court lacks subject matter jurisdiction over Levin's action and to the claim that Levin's suit barred by *res judicata*. The submission of evidentiary materials does not convert a motion to dismiss for lack of subject

matter jurisdiction into one for summary judgment. *Barnhart v. United States*, 884 F.2d 295, 296 (7th Cir. 1989), *cert. denied*, 495 U.S. 957 (1990); *Crawford v. United States*, 796 F.2d 924, 927-28 (7th Cir. 1986). The court is permitted to take judicial notice of a prior court action to evaluate a motion to dismiss on grounds of *res judicata*. *Mandarino v. Pollard*, 718 F.2d 845 (7th Cir. 1983), *cert. denied*, 469 U.S. 830 (1984). Levin does not dispute the accuracy of the exhibits.

Defendants' exhibits establish that Levin did not raise any constitutional objections during the disciplinary proceedings or in his petition to the Illinois Supreme Court for leave to file exceptions to the report and recommendation of the ARDC Review Board. Def. Exs. 2-5, 8. However, on September 26, 1994, Levin filed a motion for supervisory order with the Illinois Supreme Court pursuant to Illinois Sup. Ct. R. 383 ("the Rule 383 motion"). Def. Ex. 6. In the Rule 383 motion, Levin asserted that the disciplinary proceedings were procedurally defective and raised due process and *ex post facto* objections to the application of amended Rule 753. Def. Ex. 6. The Illinois Supreme Court denied the Motion for Supervisory Order on October 28, 1994. Def. Ex. 7.

Defendants' exhibits also establish that the Illinois Supreme Court entered final judgment in the disciplinary proceedings after Levin filed his action in this court. On January 25, 1995, the Illinois Supreme Court denied Levin's petition for leave to file exceptions to the Review Board report and disbarred Levin. Def. Ex. 9.

DISCUSSION

I. *Counts I, II, III, V, and VI.*

A. Subject Matter Jurisdiction

Counts I, II, III, V, and VI assert that the disciplinary proceedings were constitutionally deficient. Defendants contend that the court lacks subject matter jurisdiction over these counts under the *Rooker-Feldman* doctrine.

In *Rooker v. Fidelity Trust Co.*, 263 U.S. 413, 416 (1923), and again in *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462, 482 (1983), the United States Supreme Court held that federal district courts lack jurisdiction to review the judicial decisions of the highest court of a state. Under the *Rooker-Feldman* doctrine, a district court does not have subject matter jurisdiction to review challenges to a state bar proceeding if (1) the proceeding was judicial in nature and (2) the claim in federal court is so "inextricably intertwined" with the state proceeding as to make consideration of the claim an impermissible review of the state judicial proceedings. *Leaf v. Supreme Court of Wisconsin*, 979 F.2d 589, 596 (1992), *cert. denied*, 113 S. Ct. 2417 (1993).

The state disciplinary proceedings are judicial in nature. Attorney disciplinary proceedings are generally judicial. *Greening v. Moran*, 953 F.2d 301, 305 (7th Cir.), *cert. denied*, 113 S. Ct. 77 (1992). As alleged by Levin and established in defendants' exhibits, the disciplinary proceedings applied laws already in existence to present and past facts; these activities classify the proceedings as judicial. *Leaf*, 979 F.2d at 597.

The claims raised in Counts I, II, III, and V are also so "inextricably intertwined" with the disciplinary proceedings as to render any consideration of these counts

by this court an impermissible review of the Illinois Supreme Court's decision. In Counts I and II, Levin asserts that the disciplinary proceedings deprived him of due process; Levin's Rule 383 motion contained a similar argument. In Counts III and V, Levin asserts that the application of amended Rule 753 to his disciplinary proceedings made both the proceedings themselves and any resulting punishment unconstitutional; the Rule 383 motion contained an identical claim. In denying Levin's motion for Supervisory Order, the Illinois Supreme Court rejected the constitutional challenges contained in Counts I, II, III, and V. While Levin may seek review of the Illinois Supreme Court's decision by the United States Supreme Court, the *Rooker-Feldman* doctrine prevents this court from revisiting his claims.

Levin contends that he avoided "inextricably intertwining" his constitutional claims with the disciplinary proceedings by raising them only in his Rule 383 motion. Levin argues that this tactic kept his constitutional arguments "pure and separate" from issues presented in the disciplinary proceedings. Levin's argument is meritless. Supervisory orders under Rule 383 resolve issues in pending cases; Rule 383 does not provide a mechanism for rendering advisory opinions. *People ex rel. Partee v. Murphy*, 133 Ill. 2d 402, 550 N.E.2d 998, 1003 (1990). Indeed, Levin's Rule 383 motion identified the disciplinary proceedings as the pending case over which the Illinois Supreme Court should exercise supervisory authority. Def. Ex. 6 at 1, 5-6. The Rule 383 motion was therefore inseparable from the disciplinary proceedings. Accordingly, the court lacks subject matter jurisdiction over Counts I, II, III, and V.

B. Res Judicata

Count VI asserts that Illinois Supreme Court Rule 771 provides inadequate guidelines for the imposition of disciplinary sanctions, rendering the rule unconstitutional on its face. The Rule 383 motion did not contain any reference to Rule 771, and there is no evidence that the Illinois Supreme Court ever considered this claim; the *Rooker-Feldman* doctrine therefore does not prevent this court from considering Count VI. However, Count VI is barred by the doctrine of *res judicata*.

Under the doctrine of *res judicata*, a final judgment on the merits of an action precludes the parties from relitigating issues that were or could have been raised in that action. *Leaf*, 979 F.2d at 600. In applying *res judicata*, "a federal court must give to a state-court judgment the same preclusive effect as would be given that judgment under the law of the State in which the judgment was rendered." *Id.* (citing *Migra v. Warren City School District Board of Ed.*, 465 U.S. 75, 81 (1984)).

Under Illinois law, the doctrine of *res judicata* applies when there is (1) a final judgment on the merits in an earlier suit; (2) an identity of parties in the earlier and later suits; and (3) an identity of causes of action in the two suits. *Yaw v. Beeghly*, 109 Ill. App. 3d. 627, 440 N.E.2d 1066, 1069 (1982). A final judgment is conclusive not only as to those matters actually litigated, but also as to claims that could have been decided in the earlier suit. *Id.*; *Torres v. Rebarchak*, 814 F.2d 1219, 1222 (7th Cir. 1987).

The elements of *res judicata* are met in this case. The Illinois Supreme Court's January 25, 1995 order denying Levin's petition for leave to file exceptions and revoking Levin's law license constitutes a final judgment on the

merits in the disciplinary proceedings.[1] The parties are identical: Robinson and the ARDC initiated the disciplinary proceedings against Levin; Levin sues Robinson and the ARDC in the present suit. Finally, there is an identity of claims. Levin's Rule 383 motion raised the same constitutional challenges presented in Counts I, II, III, and V of his present suit.

The claims contained in Counts I, II, III, and V were litigated in the disciplinary proceedings; these claims would therefore be *res judicata* even if the court had subject matter jurisdiction over them. Levin did not raise the constitutional challenge to Rule 771 found in Count VI during the disciplinary proceedings. However, Levin is precluded from raising this claim because the claim could have been litigated in the disciplinary proceedings. Illinois attorney disciplinary proceedings permit a lawyer to challenge both the constitutionality of disciplinary rules and the adequacy of disciplinary proceedings. *See, e.g., In re Doyle,* 144 Ill. 2d 451, 581 N.E.2d 669 (1991) (due process challenge to disciplinary hearing); *In re Samuels,* 126 Ill. 2d 509, 535 N.E.2d 808 (1989); (*ex post facto* challenge of disciplinary rule). Because Levin had the opportunity to present his constitutional challenge to Rule 771 during the disciplinary proceedings, his failure to do so precludes Levin from raising the claim in Count VI of

[1] Levin contends that no "final judgment" was reached as to his constitutional claims because the denial of the Rule 383 motion was not a final order. Levin's argument incorrectly assumes that the Rule 383 motion is separable from the underlying disciplinary proceedings. Because the Rule 383 motion was part and parcel of the disciplinary proceedings, the Illinois Supreme Court's January 25 order finally disposed of any issues raised in the Rule 383 motion.

his present complaint. Count VI is therefore properly dismissed on *res judicata* grounds.

II. *Count IV*

Count IV asserts that defendants instituted the disciplinary proceedings "knowingly and intentionally . . . to prosecute the plaintiff for alleged ethical violations in total disregard of the plaintiff's constitutional rights" and seeks monetary damages of $5,000,000. Defendants contend that Count IV fails to state a claim because defendants are entitled to immunity from damages under section 1983.

The ARDC and its staff function as agents of the Illinois Supreme Court in administering attorney disciplinary proceedings. *In re Mitan*, 75 Ill. 2d 118, 387 N.E.2d 278, *cert. denied*, 444 U.S. 916 (1979). The ARDC and its personnel are immune from suits for damages under section 1983 based on the adjudication or prosecution of attorney disciplinary proceedings. *Lawline v. American Bar Ass'n*, 956 F.2d 1378, 1385 (7th Cir. 1992), *cert. denied*, 114 S. Ct. 551 (1993); *Kissell v. Bresklow*, 579 F.2d 425, 430 (7th Cir. 1978).

Levin notes that judicial officers are not immune from suit for declaratory or injunctive relief when promulgating a code of conduct for attorneys. *Supreme Court of Virginia v. Consumers Union of the United States*, 446 U.S. 719, 736-37 (1980). Judicial officers are also not immune from suit for damages when they perform purely administrative functions such as hiring or firing court officers. *Forrester v. White*, 484 U.S. 219, 229 (1988). However, the complaint does not identify any instance where the ARDC or Robinson either performed purely administrative functions or promulgated a code of conduct. Instead, Count IV clearly alleges that defendant acted "knowingly and intentional-

ly . . . to *prosecute* the plaintiff for alleged ethical violations.' Because Count IV seeks to hold defendants liable for damages for their actions in prosecuting Levin, defendants are entitled to immunity under section 1983. Accordingly, Count IV fails to state a claim against defendants.

CONCLUSION

Defendants' motion to dismiss is granted. This action is dismissed with prejudice.

ENTER:

/s/ Suzanne B. Conlon
Suzanne B. Conlon
United States District Judge

March 20, 1995